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FILED
U.S. DISTRICT COURT
2005 NOV -3 P 4: 30
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN AND FOR THE UNITED STATES FEDERAL DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

U.S. GENERAL, INC., a Utah
Corporation, DJ INVESTMENT
GROUP, LLC, a Utah Limited
Liability Company; DAN
SIMMONS, an individual; ARDEN
BODELL, an individual

Plaintiff,

vs.

DRAPER CITY, a municipal
corporation, DAE/WESTBROOK
SUNCREST LLC; WESTERRA
MANAGEMENT LLC; MARC
SCROGGINS; and JOHN DOES
I through 10

Defendants.

COMPLAINT
(JURY TRIAL REQUESTED)

Judge J. Thomas Greene
DECK TYPE: Civil
DATE STAMP: 11/03/2005 @ 16:28:26
CASE NUMBER: 2:05CV00917 JTG

COMES NOW U.S. General, Inc., D.J. Investment Group, LLC, Dan Simmons and
Arden Bodell and as a claim for relief against Draper City, DAE/Westbrook, SunCrest LLC,
Westerra Management LLC, Marc Scroggins and John Does I-X, alleges and says as follows:

PARTIES

1. Plaintiffs are individuals or entities having the fee ownership interest in certain parcels of real property located in Salt Lake and Utah Counties, State of Utah or whose principal place of business is in Salt Lake County, Utah.
2. All of the defendants are individuals or entities who are doing business in Utah, and have caused injury to Plaintiffs' property and to Plaintiffs within the State of Utah.
3. Defendant Draper City is a municipal corporation existing within the State of Utah, organized under the laws of the State of Utah, and subject to the jurisdiction of this court.
4. John Does 1 through 10 are individuals and entities who assisted, abetted and aided the named defendants.

JURISDICTION

5. The Defendants have taken certain actions which materially affect and injure the Plaintiff's interest in real property as more fully set forth below.
6. The Defendant Draper City and other city employees are amenable to suit on Plaintiff's claims, immunity having been waived by Utah Code §63-30-6.
7. This is an action which requires service of notice pursuant to §63-30-11 and notice has been properly served upon the Defendant Draper City. Plaintiff is authorized to proceed with this action in accordance with the Governmental Immunity Act because more than 90 days has elapsed since service of proper notice, and no response has been made by Defendant Draper

City, thereby entitling Plaintiff to treat the failure to respond as a constructive denial of the claim.

8. Plaintiff has served notices upon the Defendant Draper City in accordance with the Governmental Immunity Act, copies of which are attached hereto as Exhibits "1, 2 and 3" to this Complaint.
9. The injuries alleged in this proceeding arose in Salt Lake County and the property in question is located in Salt Lake County, therefore the proceeding is properly situated in the Third District Court in Salt Lake County. This action asserts claims under the Sherman Antitrust Act of 1980, 15 U.S.C. § 2 et seq. ("Sherman Act").
10. This Court has jurisdiction over this action under 15 U.S.C. § 2 and 28 U.S.C. § 1331 and under Section 16 of the Clayton Act, 15 U.S.C. § 26, to recover damages for and to restrain a continuing violation by defendants of Section 2 of the Sherman Act, 15 U.S.C. § 2, and Section 4 of the Clayton Act, 15 U.S.C. § 15.
11. Venue is proper in this District, pursuant to Sections 12 of the Sherman Act, 15 U.S.C. § 22, and 28 U.S.C. §1391(b), (c), because defendants transact business in the State of Utah and/or the claims arose at least in part in the State of Utah.

GENERAL INFORMATION

12. For over seven years, the City of Draper and DAE/Westbrook aka Terrabrook, dba SunCrest LLC, owned and operated by Westerra Management, LLC (hereinafter “the Developer”), have created a monopoly on traverse mountain, commonly referred to as SunCrest.
13. The Developer has received preferential treatment from the City of Draper that effectively eliminates any competition from adjacent property owners on traverse mountain. The SunCrest Developer is often referred to as the “Master Developer” of the SunCrest Development as a direct result of their predatory and exclusionary practices that they have used to create a monopoly on traverse mountain.
14. Draper City has knowingly allowed the SunCrest Developer to among other predatory and exclusionary practices, build a water system that will only serve the SunCrest Developer, and has agreed to reimburse the SunCrest Developer for its costs to construct the water system, in a method and manner that discriminates against adjacent property owners and prohibits such property owners from obtaining adequate water supplies and sources.
15. Draper City holds a strong bias in favor of the SunCrest developer, to whom Draper City has shown consistent and discriminatory favoritism, and has, by threatening not to sign renewals of the staff's employment contracts, intimidated the staff of Draper City to consistently show favoritism to this developer, thereby allowing development to proceed in violation of city requirements.

16. Conversely, Plaintiff U.S. General, Inc., was forced to surrender land at the base of Traverse Mountain and to pay for and increase utility sizes for the benefit of the SunCrest developer without compensation because Draper City at the time, said these costs would be for the benefit of not just the SunCrest Developer, but for all residents via “shared community” services. Plaintiff U.S. General, Inc. was also forced by the City of Draper to pay in advance the construction of a community water tank at the foothills of Draper and it was from that process, Plaintiff likewise believed what was good for his development and adjacent property owners developments, should be good for the SunCrest Developer and their fellow property owners who also would like to develop their properties.
17. Presently, the City of Draper has no incentive, nor has it ever made a demand on the SunCrest Developer to construct adequate water service, including water tanks and water lines. There cannot be any community services without Draper City’s directive to SunCrest to provide such infrastructure. SunCrest has no incentive to build reimburseable community services because it would create competition.
18. It was learned during the discovery process in a separate legal proceeding between Plaintiffs and Draper City that Draper City has met secretly and without proper notice with the SunCrest Developer.

19. During the secret meetings between Draper City and the SunCrest Developer, the parties agreed to create protection strips that would effectively limit and restrict Plaintiffs access to Plaintiffs' property.
20. The predatory and exclusionary practices of Draper City have escalated to such extremes that the Draper City Manager recently resigned as a result of the extreme favoritism shown by Draper City toward the SunCrest Developer.
21. The SunCrest Developer has enjoyed approximately eight years of development on traverse mountain within Draper City limits without any competition because of the unfair, discriminatory, exclusionary and predatory practices of Draper City.
22. Draper City has agreed to permit SunCrest Developer to not contribute to the community services. However Draper City has required Plaintiffs in the past to contribute to community services for the benefit of SunCrest Developer and SunCrest Development.
23. Draper City's contracted law firm, its mayor and City Council have all agreed to eliminate requirements for a master storm drainage plan from the SunCrest Development, even though all other developments are required to have and comply with a master storm drainage plan.
24. Draper City, by using the authority of the State of Utah, has engaged in illegal discrimination in denying equal protection to Plaintiffs by their policy of favoring one developer to the exclusion of others. That discrimination has provided SunCrest a seven year long monopoly on development and sale of lots in the Traverse Mountain area.

RELEVANT MARKET

25. The relevant market that pertains to Plaintiff's claims herein is the development of traverse mountain located on the eastern foothills in Salt Lake and Utah Counties, Utah.
26. The development market for Traverse Mountain consists of real property located within Draper City limits in Salt Lake and Utah Counties on the eastern bench area. The development includes infrastructure such as water, sewer and other utilities that are used by the community.

COUNT I

**FOR VIOLATIONS OF SECTION 2 OF THE SHERMAN
ANTITRUST ACT 15 U.S.C. § 2 - MONOPOLIZATION OF TRADE**

27. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as if fully set forth herein, and further alleges as follows:
28. From at least as early as 2000, the SunCrest Developer has willfully maintained a monopoly in the traverse mountain development market, and abused its monopoly power in the relevant markets, by, inter alia, acting in the manner hereinbefore alleged, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
29. The SunCrest Developer has acted with the specific intent to achieve, maintain and exercise its monopoly power.

30. As a direct and proximate result of the violations alleged herein, Plaintiffs have been unable to, and will continue to be unable to develop their property located at Traverse Mountain pursuant to free and open competition, and Plaintiffs have been damaged, and will continue to be damaged, by their respective development at prices higher than they would have otherwise paid, absent defendant's unlawful conduct.
31. The SunCrest Developer possesses monopoly power in the development market for traverse mountain. Through the anticompetitive conduct described herein, the SunCrest Developer has willfully maintained, and unless restrained by the Court, will continue to willfully maintain that power by anticompetitive and unreasonably exclusionary conduct. The SunCrest developer has acted with an intent to illegally maintain its monopoly power in the development market, and its illegal conduct has enabled it to do so, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
32. Plaintiffs have no adequate remedy at law and defendant's unlawful conduct will continue unless enjoined.
33. Defendant's unlawful restraints of trade and development violate Section 2 of the Sherman Act. Accordingly, Plaintiffs seek three times their damages caused by defendant's violations of Section 2 of the Sherman Act and a permanent injunction enjoining defendant's continuing violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

COUNT II

**FOR VIOLATIONS OF SECTION 2 OF THE SHERMAN
ANTITRUST ACT 15 U.S.C. § 2 - ATTEMPT TO MONOPOLIZE**

TRADE

34. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as if fully set forth herein, and further alleges as follows:
35. Defendant SunCrest has acted with the specific intent to achieve, maintain and exercise its monopoly power.
36. SunCrest's conduct, as averred, raised and continues to raise a dangerous probability of achieving unlawful monopoly power.
37. SunCrest has attempted to acquire and misuse monopoly power in the relevant market in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.
38. As a direct and proximate result of the violations alleged herein, Plaintiffs have been unable to, and will continue to be unable to, develop real property located at traverse mountain at prices determined by free and open competition, and Plaintiff have been damaged, and will continue to be damaged, by their respective development of real property at prices higher than they would have otherwise paid, absent defendant's unlawful conduct.

39. Plaintiff s have no adequate remedy at law and defendant's unlawful conduct will continue unless enjoined.
40. Defendant's unlawful restraints of trade violate Section 2 of the Sherman Act. Accordingly, Plaintiffs seek three times their damages caused by defendant's violations of Section 2 of the Sherman Act and a permanent injunction enjoining defendant's continuing violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

COUNT THREE- CIVIL CONSPIRACY

41. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs as if fully set forth herein, and further alleges as follows:
42. Defendants acted in concert with each other to accomplish the allegations set forth above.
43. Defendants had a meeting of the minds or a course of action to accomplish the allegations set forth above.
44. As a proximate result of Defendants' actions, Plaintiffs have been injured in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests:

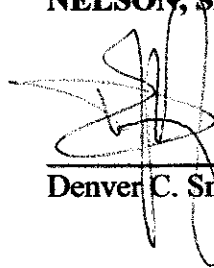
1. That the Court adjudge and decree that Defendant SunCrest (a) unlawfully acted to maintain a monopoly, and (b) attempted to monopolize, all in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2
2. That the Court grant a permanent injunction enjoining defendant from continuing its violation of Section 2 of the Sherman Act.
3. That Plaintiffs recover compensatory damages, as provided by law, determined to have been sustained as to each of them, and that judgment be entered against Defendant in favor of the Plaintiffs.
4. That Plaintiffs recover damages as provided by law.
6. That Plaintiffs recover their costs of this suit, including attorneys' fees, as provided by law.
7. That the Court grant such further relief as to the Court may seem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure as to all issues so triable as a matter of right.

Dated: November 1, 2005

NELSON, SNUFFER & DAHLE, P.C.

A handwritten signature in black ink, appearing to be "DS", written over a horizontal line.

Denver C. Snuffer, Jr.

Plaintiff's Address:

JS 44 (DUT) 2003

CIVIL COVER SHEET

VERSION FOR USE IN U.S. DISTRICT COURT FOR THE DISTRICT OF UTAH

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS.)

I. (a) PLAINTIFF(s) Please list and number each plaintiff 1. U.S. General, Inc. 2. DJ Investment Group, LLC 3. Dan Simmons 4. Arden Bodell 5. 6. (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF: <u>Salt Lake</u> (EXCEPT IN U.S. PLAINTIFF CASES)		(c) ATTORNEY(s) [Firm name, Address, Telephone and Fax Number(s)] Denver C. Snuffer, Jr., JTG Nelson, Snuffer, Dahle & Poulsen 10885 South State Street Sandy, UT 84070 Telephone: (801) 576-1400 Facsimile: (801) 576-1960 Judge J. Thomas Greene DECK TYPE: Civil DATE STAMP: 11/03/2005 @ 16:28:26 CASE NUMBER: 2:05CV00917 JTG																					
(a) DEFENDANT(s) Please list and number each defendant 1. Draper City 2. DAE/Westbrook 3. SunCrest LLC 4. Westerra Management LLC 5. Marc Scroggins 6. John Does 1-10 (b) COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT: <u>Salt Lake</u> NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.		(c) ATTORNEY(s) [Firm name, Address, Telephone and Fax Number(s)]																					
II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <table style="width: 100%; border: none;"> <thead> <tr> <th></th> <th>PLA</th> <th>DEF</th> <th>PLA</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td><input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </tbody> </table>			PLA	DEF	PLA	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6																			
IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____ <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment																							
V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) 15 U.S.C. §2, Violations of the Sherman Act.																							
VI. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION <input type="checkbox"/> UNDER F.R.C.P. 23		DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																					

**VII. RELATED CASE(S) (See Instructions):
IF ANY**

JUDGE _____

DOCKET NUMBER _____

VIII. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

IX. STATE COURT REMOVALS:

(a) List any parties which are no longer pending:

(b) List any pending motions and date filed. If responses or replies have been filed, indicate the date filed.

MOTION/DATE FILED

RESPONSE/DATE FILED

REPLY/DATE FILED

1.

2.

3.

4.

DATE 11/3/05

SIGNATURE OF ATTORNEY OF RECORD

FOR DENVER C. SUMNER

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____